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*Before the
Federal Communications Commission*
Washington, D.C. 20054

APR 12 1996

In the Matter of)
)
Federal-State Joint Board) CC Dkt. # 96-45
Universal Service)
)

COMMENTS OF

AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION
("ACTA")

Initial Comments: April 12, 1996

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SUMMARY

America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits its initial comments on only certain of the issues raised by the Commission's Notice of Proposed Rulemaking and Order Establishing Joint Board ("NPRM") in the captioned docket.

On *Quality of Services*, ACTA is reserving comment on what tools may be most effective in accomplishing Congress' objectives for ensuring quality of services. However, ACTA urges the Commission to make explicit that the concept of quality of service must incorporate evaluating services provided in today's environment of the "tiered network structure" or the "network of networks" structure. On *Affordable Rates*, ACTA submits that these will most likely depend on ad hoc determinations based on the circumstances of the service being provided, the market in which provided, the state of development of technology, relative pricing, and similar unique factors. ACTA suggests, in addition, that "affordability" must include the concept of rational pricing decisions based on sound economics (cost recovery, reasonable profit, etc.) and prudent business judgment (technical feasibility, etc.).

On *Advanced Telecommunications vs. Basic Services*, ACTA submits that some of today's "advanced telecommunications" will quickly convert to "basic." The alchemy by which this will occur will not rest on today's "gee-whiz" reaction to technology's seeming "magical" potentials, but on the need for more and better services which serve common needs of all to communicate better, more efficiently, securely, safely and/or rapidly. The Commission is correct in recognizing that the ultimate decider of what will be included in the evolving definition of universal service will depend on costs. On ensuring *competitively neutrality*, ACTA sees this goal as essential to the achievement of the overall goals of Section 254 of the TA96.

On the use of statutory *criteria*, ACTA believes the Commission should use all four criteria in defining new services to support Federal universal service. And on *collection*, ACTA submits that no telecommunications services” can be exempt from supporting universal service. At the same time, no provider should be required to pay twice; and no provider should be exempt, regardless of the facilities used to provide telecommunications services.

As to the goals and principles to govern support for rural, insular and high cost-areas and low-income consumers, ACTA supports inclusion of all five services for universal service support. ACTA supports the concept that access to interexchange services should be part of the new formula of universal service. ACTA urges the Commission to ease the integration of interexchange services into a universal service regime. This may be accomplished by giving this service proper regulatory status and recognizing its true economic value which, in turn, will help defray part of the cost of funding its status as a universal service. ACTA urges the Commission to adopt rules permitting termination or temporary discontinuance of service for non-payment of long distance charges and, if necessary, to preempt the states from adopting a different policy in regard to non-payment of intrastate long distance charges.

ACTA tentatively favors calculating support based on inputs (facility costs determining subsidy amounts) versus outputs (price of services determining subsidies). The Commission must also cease any program that requires subsidization of incumbent LECs.

ACTA urges the Commission to table considering competitive bidding to set subsidy levels. Competitive bidding cannot take place until there are competitors in the market. ACTA also urges the Commission to extends the cap on USF funding.

ACTA urges the Commission to apply commercial common sense and economic realism in addressing what services for low-income consumers should be provided under the universal service mandate. For example, the statistics cited at n. 130 of the NPRM, may or not be relevant to the issues under consideration. Fact-finding may be necessary. Are low income households able to obtain their telephone needs without having a telephone in the home? For example, can community phones be installed in apartments and other types of multi-unit dwellings? In some cities, call centers have enjoyed success. At call centers, prepaid calls may be originated and terminated around the world, with each household selecting the time and cost of each call desired. For those without sufficient credit to obtain a phone, debit cards could be modified to permit local, as well as, long distance calling.

ACTA disfavors any industry having to subsidize services it must sell at a profit in order to maintain the capability to provide any service at all. If Congress wishes to expand the availability of services, Congress should do so by enacting a specific entitlement program and support it with tax revenues.

ACTA fully supports the goals of providing ubiquitous access to telecommunications technology in order to provide advanced telecommunications services to educational institutions and rural health care providers. However, the laudable intent of the TA96 in this area may produce unforeseen tensions. ACTA is concerned that carriers are involuntarily thrust into a no-win position of being the cause of a debate among school authorities over whether to raise teachers' salaries or obtain access to advanced communications services.

Moreover, given the Commission's own statistics that lower income households have less telephone access, it should be no surprise that studies show that such advanced communications for

schools, such as Internet access, are not likely to be available to schools with students from low income families. These facts relate to ACTA's Internet Petition, and the assertion of some Internet "cybernavts" to a "cyberspace right" to obtain free telephony service via the "Net." The issue is whether these cybernavts should be able to extract free telecommunications services over the Net and if so, what impact will this have on the economic capability of the carriers providing services over the public switched networks to provide subsidized services as required by the TA96, and specifically subsidized access to the Internet?

At this time, ACTA has no immediate recommendation on the place, in the new regime, of other universal service support mechanisms, but a tension seems to exist between achieving the goals of the TA96 and the desire that certain intended beneficiaries of the TA96 be exempted from any contribution toward the broader and more universal achievement of those benefits.

In light of the eventual merging of local and long distance services, interstate services must no longer carry a disproportionate burden of sustaining the telecommunications infrastructure. In addition all carriers (local, long distance, facilities-based, non-facilities based, CMRS, etc.), private networks tying into the public networks, ESPs, ISPs, IAPs (so long as no double burden is imposed), and end users as a whole should contribute to the new universal service imperative. No one should be exempt from making a contribution, other than the most asset-impaired.

A non-governmental body should be chosen to administer the fund. This body should have no direct nor indirect loyalties or relationships to any segment of the industry - meaning that no accounting firms, no management consulting firms, or other firms which are, or have been, or are likely to be, a vendor of services or products to any industry segment or any constituent member

thereof, should be permitted to be the administrator. The Commission should moreover give thought to accepting competitive bids by companies interested in becoming the administrator.

COMMENTS

I. Introduction.¹ America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits its initial comments on certain of the issues raised by the Commission's Notice of Proposed Rulemaking and Order Establishing Joint Board ("NPRM") in the captioned docket. ACTA is a national non-profit trade association representing the interests of third tier interexchange carriers, their customers and their suppliers, interested in the establishment and continued advancement of a more fully competitive marketplace for today's and for the 21st Century's communications services.

The purpose of this NPRM is to redefine the services supported by universal service mechanisms, consistent with the new statutory standards imposed by Congress in Section 254 of the Telecommunications Act of 1996 (P.L. No. 104-104, 110 Stat. 56 (February 8, 1996) (herein "TA96")); and to ensure that the mechanisms ultimately chosen will incorporate advances in telecommunications and information technologies. NPRM @ ¶2.²

In carrying out its universal service duties, the Commission recognized that Section 1 of the Communications Act of 1934 was, until the enactment of the TA96, the touchstone of universal service upon which the industry and the Commission relied. NPRM @ ¶3. The Commission then observed that the TA96 expanded the universal service standard by adding that the duty to make available to all people of the United States rapid, efficient, national and international communications services with adequate facilities at reasonable charges now must be

¹ These comments follow the sectional organization of the NPRM.

² References are to the paragraphs of the NPRM.

determined by six guiding principles.³ Now, the duty to provide universal service must be carried out “without discrimination on the basis of race, color, religion, national origin or sex.”

II. Goals and Principles.

A. Quality of Services.

ACTA reserves comment on what tools may be most effective in accomplishing Congress’ objectives for ensuring quality of services. However, ACTA urges the Commission to make explicit that the concept of quality of service must incorporate evaluating services provided in today’s environment of the “tiered network” or the “network of networks” structure. Without evaluating one carrier’s service provided to another carrier (underlying carriers to resale carriers; access carriers to interexchange carriers, etc.), it will be impossible to ensure quality of service to the end using public without first ensuring that each network within the chain of networks is receiving quality of service.

B. Affordable Rates.

Affordable rates will most likely depend on ad hoc determinations based on the circumstances of the service being provided, the market in which provided, the state of development of technology, relative pricing, and similar unique factors. A general principle, however, would be that “affordability” must include the concept of rational pricing decisions based on sound economics (cost recovery, reasonable profit, etc.) and prudent business judgment

³ The six specific principles are: (1) quality of service at just, reasonable and “affordable” rates; (2) access to advanced services; (3) access in rural and high cost areas; (4) equitable and non-discriminatory contributions; (5) use of specific and predictable support mechanisms; and (6) access to advanced services for schools, health care and libraries. A seventh principle incorporates the general standard of the public interest, convenience and necessity. TA96, Section 254(b).

(technical feasibility, etc.), as opposed to misguided “altruistic” objectives. ACTA has already heard from a segment of the populace who would define “affordable” as “free.”⁴ The Commission’s rules must not create a federal “entitlement” to telecommunications, but, rather, ensure fair access to those services.

C. Advanced Telecommunications vs. Basic.

Universal service as a concept has and will continue to change. How far it evolves will depend on the future. However, ACTA submits that some of today’s “advanced telecommunications” will quickly convert to “basic.” The alchemy by which this will occur will not rest on today’s “gee-whiz” reaction to technology’s seeming “magical” potentials, but on the need for more and better services which serve common needs of all to communicate better, more efficiently, securely, safely and/or rapidly. The Commission is correct in recognizing that the ultimate decision regarding what will be included in the evolving definition of universal service will depend on costs. However, as competition increases the quantity of supply, prices will fall; therefore, basic principles of free market economics will ultimately serve the public interest.

D. Competitively Neutral.

Failure to ensure that the means chosen to deliver universal service support is competitively neutral will hamper, if not destroy, the achievement of the overall goals of Section 254 of the TA96. Universal service obligations have been and will continue to be used to fend

⁴ See Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking; Request the Provisions of Interstate and International Interexchange Telecommunications Service via the “Internet” by Non-Tariffed, Uncertified Entities, PN March 4, 1996, RM 8775 (“Internet Petition”).

off real competition under the guise of protecting the concept of service for all at the expense of achieving real change in today's local monopoly environment.

E. Criteria.

Until more is learned about applying universal service policies in the future, the Commission should use all four criteria of Section 251(c)(1) of the TA96 (essential, substantive use, deployment, and consistent with the public interest) in defining new services to support federal universal service. In addition, the proper guide to determining, in this context, whether any service is to be considered "essential" would, in the first instance, seem to be the judicious use of common sense applied to the realities of costs, feasibility and need.

F. Collection.

No "provider of telecommunications services" can be exempt from supporting universal service. The injustice built into the present scheme, in which a handful of small carriers in particular are penalized by having to contribute to multi-billion dollar monopolies, can be eradicated in part by making everyone subject to the social program Congress has decided to institute on a broader basis under the TA96. No provider should be required to pay twice: and no provider should be exempt, regardless of the facilities used to provide telecommunications services.⁵

⁵ The TA96 defines "telecommunications services" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used.*" TA96, Section 153(51) [Emphasis supplied].

III. Support for Rural, Insular, and High Cost Areas and Low-Income Consumers.

A. Goals and Principles.

The Commission points out that the TA96 provides that “telecommunications services,” not “dial tone” or a narrow category of telephone exchange service, should be affordable. NPRM @ ¶14. The Commission then lists five services as core services worthy of universal service support. ACTA supports inclusion of all five services for universal service support.

B. Support for Rural, Insular, and High Cost Areas

1. What Services to Support.

ACTA supports the concept that access to interexchange services should be part of the new formula of universal service. NPRM @ ¶23. However, ACTA reserves its position on how interexchange services could best be woven into the fabric of universal services supported by universal service funding mechanisms.

Notwithstanding this reservation, ACTA urges the Commission to take action to ease the integration of interexchange services into a universal service regime. This may be accomplished by giving this service proper regulatory status and recognizing its true economic value which, in turn, will help defray part of the cost of funding its status as a universal service. ACTA urges the Commission to adopt rules permitting termination or temporary discontinuance of service for non-payment of long distance charges and, if necessary, to preempt the states from adopting a different policy in regard to non-payment of intrastate long distance charges.

ACTA members have experienced 400 to 500% increases in bad debt/uncollectible charges due to overt actions to inform end users that local telephone service may not be terminated for non-payment of charges. The state governments and this Commission should not be in the

business of encouraging people to duck paying lawful charges, particularly when, in direct contradistinction, established jurisprudence provides for assessment of penalties against or imposes affirmative collection duties on carriers. Limiting bad debt and uncollectibles by permitting termination of service will remove an involuntary subsidy of dishonest users (“free-loaders”), by honest users, rests on sound economics and removes a significant source of unjust financial burdens on reputable carriers.⁶

The Commission poses the question of where might Internet access, data transmission, SS7 features, enhanced services and broadband services fit in the scheme of universal services. Id. The goal should be to incorporate such services in the future. Today, Internet access and most of the other services listed do not only not now meet any of the criteria in Section 254(c)(1), but involve other difficult issues that should be dealt with in other proceedings and in a less compressed time frame.

2. How to Implement.

ACTA tentatively favors calculating support based on inputs (facility costs determining subsidy amounts) versus outputs (price of services determining subsidies). Given that the standard used will determine the amount of subsidy, true costs should provide a more accurate, defensible and affordable basis than prices, particularly those set in a more openly competitive market. The problem may be one of the difficulty in determining actual costs.

⁶ The NPRM clearly recognizes the keen relationship between attaining the goals for universal service and finding the means by which to do so -- money. Such artificial and unjustified impediments to the collection of lawful charges for services rendered, has no place in such an environment, and must be eradicated as soon as possible if the Commission expects to achieve its goals, preserve competition and broaden the availability of advanced telecommunications services to all Americans.

b. How to Calculate the Subsidy.

If true competition and fair allocation of universal service support is to be achieved, the Commission must cease any program that requires subsidization of incumbent LECs.

ACTA urges the Commission to table considering competitive bidding to set subsidy levels. As the Commission points out, competitive bidding cannot take place until there are competitors in the market. Even then, it is likely that such competitors will need time to establish themselves and consolidate their financial and market position before they would be in any realistic position to effectively engage in a competitive bidding process involving universal services.

c. Transition Issues

Given the abuses the Commission itself has identified with the present USF mechanism (in the proceedings cited at n.86 of the NPRM), ACTA urges the Commission to extend the cap on the growth rate of the present USF fund.

C. Support for Low-Income Consumers

1. What Services to Support.

ACTA urges the Commission to apply commercial common sense and economic realism in addressing the issues raised in this section and in the following Sections IV and V. ACTA is as concerned as any industry group or entity that the social policies Congress has espoused in the TA96 be fairly applied and achieved. But unrealistic approaches will not accomplish these intents.

For example, it used to be common knowledge, or at least commonly accepted some years ago, when cable television was expanding that many, perhaps even a majority of low income

households would opt to cancel telephone service in favor of subscribing to cable services. Hence, the statistics cited at n. 130 of the NPRM, may or not be relevant to the issues under consideration.

Fact finding may also be necessary for other reasons. Are low income households able to obtain their telephone needs without having a telephone in the home? For example, can community phones be installed in apartments and other types of multi-unit dwellings? In some cities, call centers have enjoyed significant success. At call centers, prepaid calls may be originated and terminated around the world with each household selecting the time and cost of each call desired. For those without sufficient credit to obtain a phone, debit cards could be modified to permit local, as well as, long distance calling. Access would be obtained in the same manner as used today to place such calls from transient locations using payphones. That is, a touchtone phone would be installed in homes and all calls would be accessed via a debit card authorization. Emergency calls and a minimum number of directory assistance calls could be provided free of charge. Of course, calls could be received at any time, but the ability to receive collect calls would require use of the debit card by the receiving party to allow the collect call to be passed through.

ACTA disfavors any industry having to subsidize services it must sell at a profit in order to maintain the capability to provide any service at all. If Congress wishes to expand the availability of services beyond the type of programs suggested here, and perhaps by other commenters with more vision, perhaps Congress should make an open attempt to do so by trying to enact a specific entitlement program and support it with tax revenues. Congress should not, directly or indirectly, delegate to the Commission the task of foisting the financial burden and

responsibility for subsidized services on to the industry itself and, particularly, not one, but one or more, segments of that industry.

IV. Schools, Libraries and Health Care Providers

A. Goals and Principles

ACTA fully supports the goals of providing ubiquitous access to telecommunications technology in order to provide advanced telecommunications services to educational institutions and rural health care providers. ACTA also agrees with the Commission's own observation that "as advanced telecommunications services become ubiquitous, technological literacy will become even more important to our economy." NPRM @ ¶72.

Identifying such goals and their importance is far easier than it will be in formulating the discount methodologies that will ensure "affordable access." NPRM @ ¶74. In the first place, as the Commission has already recognized, a perfectly just and reasonable rate for access may prove to be "unaffordable" to school districts strapped for cash, because there is no money in the current budget for such "extras."

Further, the laudable intent of the TA96 in this area may produce unforeseen tensions. If achieving "affordable rates" is not to be reduced to a simple "give-away," will carriers involuntarily be thrust into a no-win position of being accused of having produced a debate among school authorities over whether to raise teachers' salaries or obtain access to advanced communications services? Will advanced telecommunications services be viewed by some as a threat to teachers' jobs, to the introduction of materials not consistent with community standards, to influences found objectionable by parents, teachers or both?

A telling observation is made in the study cited by the Commission (NPRM @ ¶79) that only "9 percent of all instructional rooms (classrooms, labs, and library media centers) are currently connected to the Internet." Moreover, this same study observes: "Schools with large proportions of students from poor families are half as likely to provide Internet access as schools with small proportions of such students." Given the Commission's own statistics that lower income households have less telephone access, this statistic on Internet access should come as no surprise.

Yet, it should be noted, that in response to ACTA's Internet Petition, some Internet "cybernauts" are vigorously rallying their legions to advance the notion that it is their "cyberspace right" to obtain free voice telephony services via the "Net." The issue is squarely presented then. If these cybernauts are correct, what effect will the ability of a small but rapidly growing segment of the population to extract free telecommunications services over the Net have on the economic capability of the carriers providing services over the public switched networks to provide subsidized services as required by the TA96, and specifically subsidized access to the Internet?

2. How to Implement.

a. Establishment of the Interstate Discount for Schools and Libraries.

Underscoring the fact that the question posed above by ACTA, is not idle speculation, the Commission's search for proposals on the factors to be used, in formulating a discount methodology, squarely rests on the issue of how to pay for universal support for schools and libraries.

The methodology could reflect whether the services used are **tariffed** or whether the charges are for **capital investments or recurring expenses**. The methodology could also be based on the **incremental costs of providing services** rather than retail prices. We also seek comment on the **estimated costs associated with each discount methodology**

NPRM @ ¶83. [Emphasis supplied].

The factor of costs in the equation is, again, expressed in the succeeding section of the NPRM when the Commission states that, in seeking to identify what "advanced telecommunications and information services" should be made available, it speaks in terms of "to the extent technically feasible and economically reasonable." NPRM @ ¶109.⁷

VI. Other Universal Service Support Mechanisms.

This section of the NPRM raises important and complex issues. It spotlights one of the "sacred cows" of telecommunications regulatory policy, which is certain to draw a broad defense and arguments for continuation from those entities which benefit directly from such policies: local exchange carriers and state regulatory bodies. Moreover, ACTA understands that consumer representatives are most insistent that no changes be adopted which shift any additional costs to end users.

At this time, ACTA has no immediate recommendation and will review comments filed to determine if any guidance may be obtained therefrom. But it appears that a tension inherently exists between achieving the goals of the TA96 and the desire that certain intended beneficiaries of the TA96 be exempted from any contribution toward the broader and more universal achievement of those benefits. The danger is that either the goals intended will be only partially realized and/or significantly delayed, or that certain segments of the community of telecommunications users and suppliers be made to unfairly bear a disproportionate burden of contributing to their achievement.⁸

⁷ See also the discussion of the role of costs in the following paragraph, 110.

⁸ ACTA believes that major portions of the community of telecom users, and some of its regulators, perpetuate a policy that disproportionately burdening some suppliers is justified because of the huge financial resources of the entities so burdened. Such an approach, if ever justified, is more difficult to justify under the dictates of the new laws and the development of technology and the potential merging of industry segments. Burdens based on resources

VII. Administration of Support Mechanisms.

A. Goals and Principles.

It is way past time that interstate services cease to carry a disproportionate burden of sustaining the telecommunications infrastructure. For ACTA, this is no longer debatable given the merging of local and long distance services.

B. Administration.

1. Who Should Contribute.

In addition to the foregoing principle, the Commission should be guided by the goal of achieving the broadest possible sharing of contribution in providing for the new universal service imperative. Since all users and suppliers will generally benefit, and the nation as a whole will also benefit from today's and tomorrow's communications capabilities, then the design of a plan must incorporate, to the greatest extent possible, a means by which all users and suppliers contribute according to the benefits they derive from the system. The degree of that benefit may be determined in part by the resources such beneficiaries accumulate, and will accumulate, from that same system. All carriers (local, long distance, facilities-based, non-facilities based, CMRS, etc.), private networks tying into the public networks, ESPs, ISPs, IAPs, (so long as no double burden is imposed) and end users, as a whole, should be included. Further, as higher taxes are required of wealthier individuals

overlooks the much greater burden also placed on those competitors which lack anything approaching such substantial resources, such as, small carriers. Even as to those carriers with greater resources, burdens which are justified on "ability to pay", rather than sound economics and just requirement, only make for bad policy and bad economics. The abuses of the current USF program demonstrate this dramatically. And, finally, competition will not survive when one competitor is made to subsidize another by direct payments, and the subsidized competitor is required merely to make book entries of "imputed costs."

and businesses, so too should greater contributions be required from those who reap greater dividends from serving or using the system. But, at the same time, no one should be exempt from making a contribution, other than the most asset-impaired.

2. How Should Contributions Be Assessed.

Comments are reserved at this time.

3. Who Should Administer.

A non-governmental body should be chosen to administer the fund. This body should have no direct, or indirect affiliation, ownership of or by, or relationships to any segment of the industry. Hence, no accounting firms, no management consulting firms, and no other firms which are, or have been, or are likely to be, a vendor of services or products to any industry segment, or any constituent member thereof, should be permitted to be the administrator. The Commission should, moreover, give thought to accepting competitive bids by companies interested in becoming the administrator. It should establish qualifications for officers and directors, consider whether it should require the concern to be a non-profit entity (ACTA submits this may not be necessary and may prove counterproductive in the long run), and what, if any, restrictions should be placed on the administrator's non-fund administration endeavors?

IX. Procedural Matters.

B. Regulatory Flexibility Analysis.

ACTA is submitting comments separately as required by paragraph 135 of the NPRM.

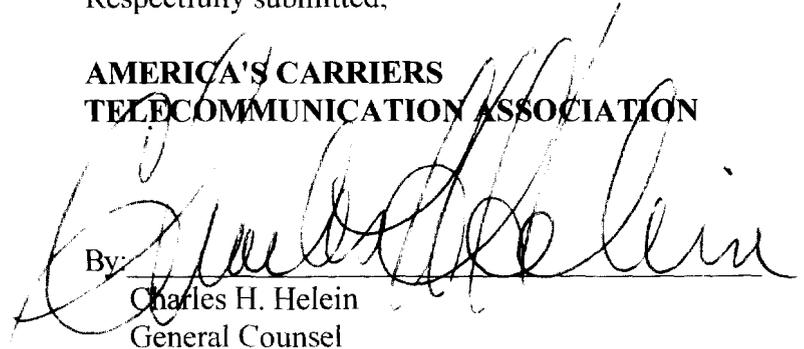
C. Comment[s]

ACTA is submitting an original and four copies of these comments, has served those listed on the NPRM's attached list, and is also filing a 3.5" diskette, formatted in an IBM compatible form,

using Wordperfect 5.1 Windows software in "read only" mode, labeled with ACTA's name, the caption of this proceeding, titled as "Initial Comments," and dated April 12, 1996. The diskette is being filed with a cover letter addressed to Ernestine Creech, Common Carrier Bureau, Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554.

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CERTIFICATE OF SERVICE

I, Suzanne M. Helein, a secretary in the law offices of Helein & Associates, P.C., do hereby state and affirm that copies of the "Comments of America's Carriers Telecommunication Association" in CC Docket No. 96-45, were served via first class mail, this 12th day of April, 1996, upon those listed in the attached service list.


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